IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1685 OF 2005

VFC INDUSTRIES PVT. LIMITED. ..... Petitioner

vs.

BALU GANPAT SAKPAL ... Respondent

Mr. P. K. Rele with Mr. Rajesh Rele, Vinod Tayde
i/b. Piyush Shah for petitioner
Mr. N. M. Ganguli for respondent

CORAM: D. G. KARNIK **J.**

DATE:11/7/2006

ORAL JUDGMENT :

1. By this petition the petitioner challenges the judgment and order dated 25th April 2005 passed by the Industrial Court in revision against the order dated 27th August 2004 passed by the Labour Court, Mumbai, allowing the complaint filed by the respondent under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the Act") and directing the petitioner to reinstate the respondent in service with back wages from 1st September 1998

to 22nd of April 2002, with continuity of service.

2. The petitioner company has a factory at village Baska, Taluka Halol, District Panchmahal and had its administrative and commercial office in Mumbai. The respondent was employed as a peon in the petitioner 's office at Mumbai. The petitioner decided to shift administrative and commercial office including accounts department from Mumbai to its factory at Baska, District Panchmahal and put up a notice to that effect on the notice board on 25th August 1998. The notice stated that the office will be shifted with effect from 1st September 1998 and all employees should report for duty at the factory at Baska, District Panchmahal, who would be given 2nd class train fair and accommodation or house rent allowance in lieu of accommodation. Some of the employees joined the work at the transferred place, while others resigned the employment and were paid their dues.

3. The respondent neither resigned the service nor joined the work at the transferred place. According to the respondent he went for work as usual at the Mumbai office on 1st September 1998

where he was orally told by the Managing Director Mr. Patil that his services were terminated. He approached the Union which wrote a letter to the petitioner on 12th September 1998 which was not replied. The respondent then personally wrote a reminder on 2nd February 1999 which also was not replied. The respondent therefore filed a complaint before the Labour Court on 17th February 1999 alleging therein that the petitioner had committed unfair labour practice by unlawfully terminating his service. He claimed reinstatement with full back wages.

4. The petitioner contested the complaint. It denied that the services of the respondent were terminated as alleged by him, and pleaded that the office at Mumbai was closed and therefore the services of the respondent were transferred to the company' s office at Baska, District Panchmahal. It further pleaded that the respondent failed to report for duty at Baska on 1st September though a notice to that effect was put up and he was informed about the transfer. The respondent had voluntarily not been attending the duties and there was no termination of service by the petitioner.

5. During the pendency of the complaint before the Labour Court the petitioner wrote a letter to the respondent on 10th August 2001 asking him to report for duty at Baska, District Panchmahal. The letter further stated that in case the respondent failed to comply action will be taken against him. Some correspondence ensued between the parties thereafter with each party making allegations against the other. However, the fact remains that the respondent never joined the petitioner's factory at Baska, District Panchmahal.

6. After consideration of the evidence adduced before it the Labour Court came to the conclusion that the petitioner had orally terminated the services of the respondent on 1st September 1998 and this amounted to unfair labour practice. In this view of the matter the Labour Court ordered the reinstatement of the respondent with back wages with effect from the September 1998. The revision application filed by the petitioner against the order of the Labour Court was dismissed by the Industrial Court by the impugned order.

7. Mr. Rele, learned counsel for the petitioner submitted that the

finding recorded by the Labour Court that the petitioner had orally terminated the services of the respondent from 1st September 1998 was palpably wrong and perverse. The petitioner was all along willing to employ the respondent. Since the office at Mumbai was closed and services of all employees including the respondent were transferred to the new office at Baska, District Panchmahal. The respondent ought to have reported for work at the new office with effect from 1st September 1998. He failed to do so. The petitioner had repeatedly called upon the respondent to join the new place of work. However, the respondent failed to join and report for work. The petitioner had never terminated the services of the respondent and therefore there was no question of passing an order of reinstatement with back wages. In the alternative he submitted that assuming that the services of the respondent were terminated by letter dated 10th May 2001 the petitioner had made an unequivocal offer to the respondent of employment and asked him to join the work. The offer was repeated in several letters in the series of correspondence that ensued between the parties after May 2001. In view of this

offer the respondent was not entitled to back wages. In support, the learned counsel referred to and relied upon two decisions of this court in **Sonal Garments vs. Trimbak Shankar Kare**, reported in 2002 III CLR 488 and **Suja Agencies vs. Udya Singh B. Rawat**, reported in 2004 (100) FLR 169.

8. Per contra, learned counsel for the respondent submitted that there was sufficient evidence to show that the petitioner had orally terminated the services of the respondent with effect from 1st September 1998. The respondent had stated that Mr. Patel, the Director of the company had personally told him that his services were terminated. Mr. Patel did not himself deny this statement. The Labour Court has believed the respondent' s evidence and recorded a finding of the fact that the services of the respondent were unlawfully terminated orally by the petitioner. This finding is perfectly legal finding and cannot be interfered with in exercise of writ jurisdiction under Article 226 of the Constitution of India.

9. With the help of learned counsel for the parties I have gone through the complaint, which is in vernacular language, as also

the written statement filed by the petitioner. In the complaint the respondent has specifically alleged that he went to work as usual at the Mumbai office on 1st September 1998 when he was not allowed to join work and the muster roll was removed. He further pleaded that Mr. Patel orally told him that his services were terminated.

10. The respondent examined himself on oath before the Labour Court and repeated on oath what he had stated in the complaint. He specifically stated that on 1st September 1998 Mr. Patel, the Managing Director of the company told him that his services were terminated. The petitioner examined one Mr. Nain Choksi but did not examine Mr. Patel. When a specific allegation was made in the complaint as well as on oath that Mr. Patel, the managing director, orally told the respondent that his services were terminated the petitioner ought to have examined Mr. Patel to deny this statement. For withholding the evidence of Mr. Patel adverse inference can be drawn against the petitioner. In any event, the finding which is recorded by the Labour Court and confirmed in revision by the Industrial Court that the services of the respondent were orally terminated and he was so

informed by Mr. Patel, the Managing Director, is a possible finding of fact and cannot be said to be in any way perverse. This finding therefore cannot be interfered with in exercise of writ jurisdiction.

11. In the case of Sonal Garments (supra), services of the workman were terminated orally by the employer on 23rd April 1991. Neither retrenchment compensation nor wages in lieu of notice was offered to him at the time of termination. The workman challenged his termination by before the Labour Court. The Labour Court granted reinstatement with full back wages. The decision was challenged before this court. This court noted that during the pendency of the dispute an offer was made by the employer to reinstate the workman. That offer was not accepted by the workman even without prejudice to his rights and contentions. In view of that this court held that the workman was not entitled to back wages at all. The award of the Labour Court was accordingly set aside. That decision was followed by this court in the case of Suja Agencies (supra). Therein the court held that where an employee does not accept the offer for employment made by the employer even without

prejudice to his rights and contentions he will not be entitled to continue the claim for reinstatement and would not be entitled to claim back wages from the date of the offer, conditional or unconditional.

12. In the present case it has come on record that the petitioner made an offer of employment to the respondent on 10th May 2001. The letter was replied by him on 29th May 2001. He declined the offer and did not join the employment. In the circumstances the respondent would not be entitled to claim reinstatement nor would he be entitled to claim back wages from the date of receipt of the letter which should be around 15th May 2001. The Industrial Court therefore erred in confirming the order for reinstatement and further erred in allowing back wages after 15th May 2001. In the circumstances the orders passed by the Courts below need to be set aside and modified. Accordingly the writ petition is allowed. The impugned order is set aside and in its place the following order is substituted.

13. It is declared that the petitioner company indulged in unfair labour practice by orally terminating the services of the

respondent on 1st September 1998. However in view of the offer made by the petitioner company to the respondent to employ him and declining of the said offer by the respondent, he is not entitled to an order of reinstatement nor entitled to any back wages from the date of offer. The petitioner is directed to pay to the respondent the entire wages from September 1998 to 15th May 2001 within a period of 4 weeks. The amount, if any, already deposited by the petitioner in this court in pursuance of the order dated 4th July 2005 would taken into consideration while computing the claim. The respondent is allowed to withdraw the amount deposited, with interest, if any, accrued thereon.

(D. G. KARNIK **J**)